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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,270	08/19/2003	Remy Zimmermann	09623V-045300US	5170
20350	7590	08/21/2007	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			SURVILLO, OLEG	
		ART UNIT	PAPER NUMBER	
				2142
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/644,270	ZIMMERMANN ET AL.	
	Examiner	Art Unit	
	Oleg Survillo	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 July 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 August 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/26/07</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This Action is responsive to the amendment filed on July 26, 2007. Claims 1-20 are pending in the application. Claims 1 and 11 have been amended. Claims 17-20 are new.

Response to Arguments

2. With regard to the Applicants' remarks filed on July 26, 2007:

Regarding the objection to the specification, Applicants' amendment has been considered and is sufficient. Therefore the objection has been withdrawn.

Regarding the rejection of claims 1, 2, 9-12, and 14 under 35 U.S.C. 102(e) as being anticipated by Best, JR. et al., Applicants' arguments have been fully considered but they are not persuasive. Therefore, the rejection is maintained.

As to claims 1 and 11, Applicants argued that the newly added limitation: "to set forth the status of the user beyond the presence and identity of the user." distinguishes independent claims 1 and 11 over Best since "**Best detects whether the user is present, and which user is present. The present invention, as set forth in the claims as amended, goes beyond that.**" This argument is not persuasive because "... status of the user beyond the presence and identity ..." fails distinctly define the metes and bounds of the subject matter that is sought to be patented, as required by 35 U.S.C. 112, second paragraph (**MPEP 2171**). In particular, "beyond the ..." is indefinite.

Claim Objections

1. Claim 20 is objected to because of the following informalities:

claim 20 (method claim), depends from claim 1 (system claim), wherein it appears that claim 20 should depend from claim 11 (also a method claim).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 1 and 11, setting forth “the status of the user beyond the presence and identity of the user” is indefinite because the scope of the claim is unclear.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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2. Claims 1, 2, 9-12, 14, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Best, JR. et al. (2005/0034147) (hereinafter Best).

As to claim 1, the preamble is given a patentable weight because the elements of the body (the IM application, the user) refer back to the preamble.

As to claim 1, Best shows a system [Fig. 2A] for updating an Instant Messaging (IM) application regarding a user of the IM application, wherein the updating is based on multimedia information (par. [0028], [0029]), the system comprising:

an information capture module [presence detector (220)] that is capable of being used for capturing the multimedia information in the vicinity of a machine on which the user is using the IM application (paragraph [0009] lines 4-7, paragraph [0029] lines 21-25);

an information extraction and analysis module [visual identification logic] that is communicatively coupled with the information capture module (paragraph [0023] lines 14-16) and is capable of being used for extracting relevant information from the captured multimedia information (paragraph [0023] lines 13-19); and

an information interpretation module that is communicatively coupled with the information extraction and analysis module [presence detector instructions (216)] that are capable of being used for interpreting the extracted and analyzed information for the IM application, wherein the interpreted information is used for updating the IM application (paragraph [0028], paragraph [0029] lines 1-11) to set forth the status of the user such as the presence (par. [0028] lines 1-6) and identity (par. [0023] lines 13-19) of the user.

As to claim 2, Best shows that the multimedia information comprises at least one of audio information, still image information, and video information (paragraph [0023] lines 15-16, paragraph [0005] lines 16-18).

As to claims 9 and 14, Best shows employing motion detection techniques for extracting relevant information from the captured multimedia information for detecting motion (paragraph [0022] lines 10-24).

As to claim 10, Best shows employing face recognition techniques for extracting relevant information from the captured multimedia information (paragraph [0023] lines 3-5 and 17-19).

As to claim 11, the preamble is given a patentable weight because the elements of the body (the IM application, the user) refer back to the preamble.

As to claim 11, Best shows a method for updating an IM application regarding a user based on captured multimedia information (par. [0028], [0029], and [0039]), the method comprising:

receiving the captured multimedia information (paragraph [0028] lines 1-5) wherein the multimedia information comprises video images (paragraph [0023] lines 15-16);

extracting and analyzing relevant information from the captured multimedia information (paragraph [0023] lines 13-19);

interpreting the analyzed information for the IM application [determining whether computer should take any action based on at least in part on the received information] (paragraph [0028] lines 5-8);

providing the interpreted information to the IM application [updating a presence database] (paragraph [0039] lines 12-13) and communicating the presence database information to a computer of user B (paragraph [0039] lines 14-15); and

updating the IM application based on the provided information [changing a GUI icon associated with user A] (paragraph [0039] lines 19-25) to set forth the status of the user such as the presence (par. [0028] lines 1-6, [0039]) and identity (par. [0023] lines 13-19, [0039]) of the user.

As to claim 12, Best shows updating the status of a user on the IM application (paragraph [0039] lines 19-25).

As to claim 18, Best shows that updating is performed only after a user trigger [person approaching a computer (210) is detected by the presence detector (220) and GUI icon is changed in response to this user trigger] (par. [0028] and [0039]). It is being noted that even though Applicants consider “a user trigger” being “a detected gesture of the user to activate the status reporting feature” (see Reply filed on July 26, 2007 under Claim 18 arguments), no such limitation (gesture of the user) is being claimed, as per claim 18. As the result, “a user trigger” is being reasonably interpreted as “person approaching a computer” in Best reference. This interpretation is supported by the specification wherein it is stated: “... trigger events can include ... a user's approaching of the camera ...” (par. [0039] in the current specification).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-6 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. in view of Mora (2004/0162882).

As to claim 3, Best shows receiving the interpreted information and updating the IM application regarding the user (paragraph [0039] lines 19-25).

Best does not explicitly show an Application Program Interface module for the IM application that is communicatively coupled to the information interpretation module.

Mora shows an API that is used for receiving information and updating the IM application regarding the user comprising a Personal Information Manager (PIM) that interfaces availability and presence information and automatically indicates the users' availability state to others (paragraph [0020]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Best by having an API module in order to receive the interpreted information and updating the IM application regarding the user (paragraph [0039] lines 19-25 in Best).

As to claims 4 and 5, Best shows updating the user's status on the IM application (paragraph [0039] lines 19-25) wherein the user's status comprises at least one of available, busy, on the phone, and away from the desk (paragraph [0039] lines 19-22).

As to claim 6, Best shows updating the user's identity [determining the identity of the user] (paragraph [0023] lines 16-19, paragraph [0035]).

Best does not show that user's identify is updated on the IM application.

Mora shows that user's identify is updated on the IM application [entering IM buddy change state (144) in the event of detecting motion] (paragraph [0035]) and changing buddy status to one from the list (paragraph [0019] lines 11-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Best by updating the user's identity on the IM application in order to take appropriate action such as changing buddy status in response to the identified user's presence (paragraph [0036] in Best).

As to claim 15, Best shows updating the identity of the user [determining the identity of the user] (paragraph [0023] lines 16-19, paragraph [0035]).

Best does not show that identify of the user is updated on the IM application.

Mora shows that identify of the user is updated on the IM application [entering IM buddy change state (144) in the event of detecting motion] (paragraph [0035]) and changing buddy status to one from the list (paragraph [0019] lines 11-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Best by updating the identity of the user on the IM application in order to take appropriate action such as changing buddy status in response to the identified user's presence (paragraph [0036] in Best).

As to claim 16, Best shows that the extraction and analyzing step comprises recognizing a face (paragraph [0023] lines 3-5 and 17-19).

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. in view of Mora in further view of Mastrianni et al. (2002/0114519).

As to claim 7, Best in view of Mora shows all the elements except for logging out a previous user, and logging in the user on the IM application.

Mastrianni shows that updating the user's identity comprises logging out a previous user, and logging in the user comprising logging in the user at step (316) Fig. 3 and logging out the user at step (320) Fig. 3 wherein the previous user is the user that was previously logged in.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Best by logging in and out the user in order to update the user's identity when the user walks away from computing device at step (320) in Mastrianni.

6. Claims 8, 13, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. in view of Toyama (2006/0193494).

As to claims 8 and 13, Best shows all the elements except for employing face tracking techniques for tracking a face.

Toyama shows employing face tracking techniques for extracting relevant information from the captured multimedia information for tracking a face (paragraph [0034] lines 1-3, paragraph [0035]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of Best by employing face tracking techniques for extracting relevant information from the captured multimedia information for tracking a face in order to determine if the user is looking at the monitor and cease speech recognition if the user is turned away (paragraph [0035] in Toyama).

As to claim 19, Best shows all the elements except for the captured multimedia information (multimedia data) includes audio data.

Toyama shows that multimedia data includes audio data [speech] (par. [0035] lines 11-19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Best by having the captured multimedia information include audio data in order to capture user speaking while facing the monitor (Toyama, par. [0035] lines 11-19).

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. in view of Harris (US Patent No.: 7,202,798).

As to claim 17, Best shows all the elements except for the status of the user comprises whether said user is on the phone.

Harris shows that the status of the user comprises whether said user is on the phone (col. 5 lines 46-67 and col. 6 lines 1-13) wherein a miniature camera (605) takes a real time image of the user (610) and automatically recognizes portable telephone

use. Upon detecting a phone usage, a signal is sent to an attendant notifying of phone usage by the user (610).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Best by having the status of the user comprise whether said user is on the phone in order to notify User B (in Best reference or "attendant" in Harris reference) that User A (in Best reference or user (610) in Harris) is on the phone (par. [0039] in Best, col. 6 lines 46-67 in Harris).

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Best, JR. et al. in view of Mora and further view of Johnson et al. (US Patent No.: 5,349,662).

As to claim 20, Best shows all the elements except for the status of said user being indicated as busy if said user is detected to be using a program other than IM or email.

Mora shows that the status of said user being indicated as busy if said user is detected to be engaged in one of the predetermined appointment events (par. [0032] lines 1-12, Fig. 4B).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Best by having the status of said user being indicated as busy if said user is determined to be engaged in one of the predetermined events in order to indicate user's presence status in response to such event (Mora, par. [0031]-[0032]).

Best in view of Mora does not show that indication of status as busy is performed if said user is determined to be using a program other than IM or email.

Johnson shows determining if said user is using a program [a spreadsheet program] (col. 6 line 33) other than IM or email [User Activity Event Detection Process] (col. 6 lines 1-38, Fig. 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Best in view of Mora by having the indication of status as busy being performed if said user is determined to be using a program other than IM or email in order properly indicate the user status corresponding to the user activity event such as invocation of a spreadsheet program.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Oleg Survillo whose telephone number is 571-272-9691. The examiner can normally be reached on M-Th 7:30am - 5:00pm; F 7:30am - 4:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Examiner: Oleg Survillo

ANDREW CALDWELL
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